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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of

Policies and Rules
Pertaining to the
Regulation of
Cellular Carriers

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) RM-8179)
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**REPLY COMMENTS OF
MCCAW CELLULAR COMMUNICATIONS, INC.**

McCaw Cellular Communications, Inc. ("McCaw") hereby submits its reply to comments filed in response to the Cellular Telecommunications Industry Association's ("CTIA") Request for Declaratory Ruling and Petition for Rulemaking.¹ McCaw and the majority of commenters support CTIA's effort to clarify cellular carriers' status as nondominant and to preserve the current high level of competition in the mobile marketplace by streamlining the tariffing requirements for cellular licensees to the maximum extent possible under the Communications Act. The sole opposition, submitted by the National Cellular Resellers Association ("NCRA"), consists of arguments that have already effectively been rejected by the Commission. Because NCRA's allegations clearly fail to meet its burden of demonstrating that cellular carriers command the market power necessary to justify dominant status, the Commission should act quickly to adopt CTIA's Petition.

¹ CTIA Request for Declaratory Ruling and Petition for Rulemaking, (filed Jan. 29, 1993) ("CTIA Petition"); see Public Notice, Report No. 1927 (Feb. 17, 1993).

D.L.H.

**I. THE COMPETITIVE MOBILE MARKETPLACE QUALIFIES
CELLULAR CARRIERS FOR NONDOMINANT STATUS**

In responding to CTIA's Petition, NCRA argues at length that cellular licensees are dominant carriers and therefore subject to detailed tariff filing requirements.² In support of its contentions, NCRA cites some familiar studies and one by its paid consultant, Pitsch Communications. These arguments, however, have grown stale. NCRA is again vainly relying upon essentially the same evidence that it offered in the CPE Bundling proceeding.³ McCaw has already addressed the substance of these allegations in its comments in that proceeding and demonstrated them to be without merit.⁴ They are no more convincing here.

Most importantly, the entire premise underlying NCRA's filing is flawed. The status of cellular carriers in the interexchange marketplace simply cannot be equated to that of any other "dominant" players. Even with its record of rapid growth, cellular has still achieved only a 5 percent market penetration thus far. The industry is clearly committed to

² NCRA at pp. 14-29.

³ Bundling of Cellular Customer Premises Equipment and Cellular Service, 7 FCC Rcd 4028 (1991) ("Order"); see also The National Cellular Resellers Association's Petition for Reconsideration, CC Docket No. 91-34 (filed July 27, 1992).

⁴ See Opposition of McCaw Cellular Communications, Inc., CC Docket No. 91-34 (filed Sept. 11, 1992) at pp. 4-10, ("Opposition of McCaw").

grow that figure in order to justify its massive capital investments, and the need to increase penetration imposes a pricing discipline on cellular carriers that was clearly absent from the Commission's original analysis of AT&T's position in the mature market for long distance services. The dual licensee structure also distinguishes cellular from any other FCC finding of market power for these purposes. Nowhere does NCRA explain why its showings can in any way overcome these self-evident demonstrations of nondominance.

With respect to its specific contentions, NCRA again cites a study by the Office of Plans and Policy which concluded that the addition of a third cellular carrier would cause a decline in cellular service prices of approximately 25 percent.⁵ As McCaw has previously explained, the staff paper applied "a theoretical model to one cellular market, Los Angeles Moreover, even assuming the paper is correct, it would simply show that the industry could be more competitive -- not that the market is 'fundamentally non-competitive'."⁶ In any event, on August 1, Fleet Call will become the third major facilities-based mobile service provider in the Los Angeles market, so any competitive benefits from such entry will be realized.

⁵ NCRA at pp. 23-25, citing Changing Channels: Voluntary Reallocation of UHF Television Spectrum, OPP Working Paper 27, November 1992.

⁶ Opposition of McCaw at pp. 6-7.

In addition, NCRA once again urges the Commission to consider a GAO study, which it characterizes as evidence that "licensees have substantial market power."⁷ In fact, the GAO study "explicitly declined to draw any conclusions about the competitiveness of the cellular industry."⁸ Instead, it revealed that the real price for cellular service fell by 27 percent between 1985 and 1991, with many customers experiencing more than a 27 percent drop in prices. The study also found that cellular prices, far from being uniform in each market, differ by an average of 22.4 percent in one-third of the top 30 markets, and even where rates are similar or identical, GAO emphasized that "[t]hese pricing patterns . . . do not necessarily indicate a lack of competition."⁹

NCRA also offers an updated cash flow analysis by Pitsch Communications.¹⁰ This self-serving study perpetuates erroneous operating cost estimates and incorrectly assumes that any return greater than 15 percent is excessive, notwithstanding McCaw's prior showing that, not only is

⁷ NCRA at p. 26, citing United States General Accounting Office, Concerns About Competition in the Cellular Telephone Industry (July 1992) ("GAO Report").

⁸ Opposition of McCaw at p. 7.

⁹ Id. at 9, citing GAO Report at p. 19.

¹⁰ Estimation of Cellular Industry Cash Flows, Market Valuations, and Profit Levels, Pitsch Communications, March 19, 1993.

return on capital not a relevant measure here, such returns are not out of line for a new, non-essential, competitive industry.¹¹ Moreover, the study fails completely to evaluate the market for cellular interstate services, which comprise only a minimal portion of the long distance market, apart from other offerings.

NCRA's further arguments are equally baseless. For example, NCRA's assertion that there are absolute barriers to facilities-based competition for cellular is belied by the advent of enhanced specialized mobile radio services ("ESMRs"), mobile data providers and, soon, personal communications services ("PCS").¹² Similarly, NCRA's claim that cellular rates are not declining fails to acknowledge the proliferation of new rate plans, many of which include substantial airtime discounts.

NCRA's assessment of the relative benefits and burdens of tariffing is no more accurate. Not only are the alleged benefits suspect,¹³ the burdens for a new industry that is dependent upon innovation and experimentation for its growth are particularly onerous. The repeated protests to the introduction of new rate plans and discount programs by cellular carriers in California demonstrate how large an

¹¹ Opposition of McCaw at pp. 9-10.

¹² McCaw at pp. 2, 6-7; NCRA at p. 21.

¹³ McCaw at p. 4, fn. 7.

impediment to market responsiveness the tariffing process can be.

Finally, NCRA's contentions stand in stark contrast to the marketplace facts as described in recent written testimony of the Chief of the Common Carrier Bureau before the California legislature.¹⁴ There, the Common Carrier Bureau Chief described the successful competitive development of cellular and other mobile services and stressed that competition in the industry is expected to increase.

"[W]hen the FCC established the licensing system for accepting cellular applications in 1981 -- under which two carriers would compete in each cellular market -- the Commission noted that competition 'will foster important public benefits of diversity of technology, service and price. . . .' With this duopoly market firmly established, the cellular industry has seen strong and steady growth, burgeoning demand, competition based on price and service, and continued improvement in service coverage.

Second, there are new services driven by new technologies that will play a major role in bringing a greater level of

cellular is assured" by PCS, specialized mobile radio services ("SMRs"), ESMRs, and mobile satellite two-way voice service ("MSS").¹⁶ "The competitive alternatives available to consumers will keep prices at market levels."¹⁷ Given this increasingly competitive environment, cellular licensees will clearly continue to lack the market power necessary to warrant a dominant classification. As such, the Commission's rules require their classification as nondominant carriers.¹⁸

II. CONCLUSION

The comments in this proceeding support CTIA's Petition and confirm the highly competitive nature of the mobile marketplace. NCRA's opposition merely restates a number of arguments previously considered and rejected by the Commission without even attempting to sustain its burden of demonstrating that cellular carriers possess the requisite market power for dominant status. Accordingly, the

¹⁶ Id.

¹⁷ Id. The FCC's prognosis is shared by McCaw and many other commenters. See BellSouth at pp. 3-5; Cellunet, Inc. at pp. 4-5; McCaw at pp. 3-11; New Par at pp. 18-20; Southwestern Bell at pp. 8-9, 11-13; Telocator at pp. 2-4.

¹⁸ 47 C.F.R. §61.3(n) (1991). Significantly, NCRA fails to demonstrate how cellular carriers' minimal share of interstate traffic -- McCaw represents no more than .27% of long distance revenues -- could qualify them for dominant status in a market containing AT&T, MCI and Sprint. See AT&T's Response To Petition For Investigation And For Order To Show Cause, File No. MSD 93-13 (filed March 2, 1993).

Commission should expressly grant cellular carriers
nondominant status and subject them to the maximum
streamlined tariffing requirements permitted under the
Communications Act.

Respectfully submitted,

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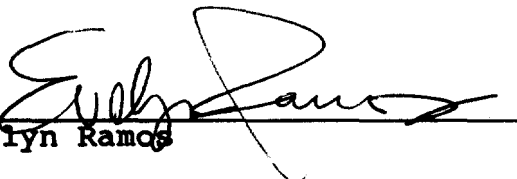
April 5, 1993

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of April, 1993, I caused copies of the foregoing "Reply Comments of McCaw Cellular Communications, Inc." to be mailed via first-class postage prepaid mail to the following:

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